

HB 494 – Revise laws relating to subdivision exemptions
Sponsor: Rep. Champ Edmunds
House Local Government, Thurs., Feb. 15, 3 pm, Rm 172

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The reason this legislation is being brought before you is a recent Montana Attorney General draft opinion on the interpretation of the exemption to subdivision review found in 76-3-204. The AG's draft opinion is a very strict interpretation that, if adopted, would have a profound impact on landowners, local subdivision reviewing agents, and, ultimately, local economies.

1. **It could substantially increase the number of subdivision reviews in communities with planning staff that is already having difficulty complying with review deadlines.** This is particularly the case in higher growth communities. Although many communities have experienced a slowdown in growth, when local economies resurge a narrow interpretation of the exemption will make it even more costly to bring a new residential or commercial development online due to the increased cost of the subdivision review process.
2. **Increasing the cost of development could cause a chilling effect on what little residential and commercial construction is occurring at this time.** Many of our local communities are experiencing considerable job losses; so any negative economic impact poses a challenge for local economies trying to get out of the current slump. Any dampening effect on residential and commercial growth would not only increase unemployment; it would result in reduced tax revenues and a reduction or elimination of essential government services.
3. **A narrow interpretation of the exemption could result in regulatory uncertainty for property owners and the neighborhoods they live in.** For example, the draft opinion could in effect negate neighborhood plans (and associated zoning requirements) that allow accessory dwelling units or boundary line readjustments to achieve higher densities. These practices would be construed as subdivisions under the draft opinion, which would very likely deter such practices from occurring. Property owners in neighborhoods across Montana should be afforded a reasonable expectation that they will be able to implement their neighborhood plans.
4. **On a practical level, how would property owners, developers, and local planning staffs know what is or is not a subdivision for rent or lease based on existing regulations?** Would it include a horse barn where the stalls are to be rented? Would it include two duplexes on a lot platted and zoned for four units, but not include a four-plex? What about four houses? Under the auspices of the draft opinion, property owners, developers, and local planning staffs will be forced to make judgment calls on a case-by-case basis. The default will be to require subdivision review in instances where it is completely unnecessary based on existing regulations.

Our concerns with the AG draft opinion also entail a broader shortcoming of the Subdivision and Platting Act. Specifically, the fact that the definition of "subdivision" includes classes of activities that are not divisions of land enables jurisdictions to use subdivision regulations as a growth management tool. MAR's long-standing position has been that the Act should be "division-centered" – i.e. it should only regulate the actual division of land, not control and regulate the development and use of the land itself. The Act should focus strictly on issues relating to survey, monumentation, easement, and access; not on broader land use controls such as "overcrowding of land," "congestion in the streets and highways," "preservation of open space," etc. We

believe that planning and zoning are the proper tools to regulate these issues, as well as others listed in Mont. Code Ann. § 76-3-102.

HB 494 clarifies the exemption to enable property owners to place one or more structures on their property for sale, rent, lease, or other conveyance and will create predictability and certainty for landowners and local planning staff.